IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

JUDGE'S ORDER NO.132 OF 2005
IN
SUIT NO.42 OF 1983

The Official Liquidator. ..Plaintiff.

V/s.

Prakashchandra Arya & Ors. ..Defendants.

Mr.Ashok Goel for defendants.

Mr.S.M.Dhambre for plaintiff.

CORAM: A.M.KHANWILKAR,J

DATE : OCTOBER 5, 2005.

P.C. :

1. As suit has been disposed of, ordinarily, I would have acceded to the prayer made in this Judge's order of discharging court receiver without passing accounts and consequential relief of permitting defendants to withdraw the amount deposited by the defendants towards royalty. However, I am inclined to grant only later relief to the defendants, in the peculiar facts of the present case. This is so because, the plaintiffs have taken steps for recall of the order dismissing the suit for default. If that relief would be granted to the plaintiffs, suit will be restored to its file, in which case, Court may think it appropriate to continue court receiver

in respect of the disputed premises. In other words, if the court receiver was to be discharged, as prayed by the defendants, there is possibility of creating third party rights in respect of the suit property, which will result in multiplicity of the proceedings. In the circumstances, first prayer of discharging court receiver is refused.

2. The limited relief that is granted in this chamber summons is permitting the defendants to withdraw the amount deposited with the court receiver. That be done by giving undertaking before this court that as and when further orders are passed or suit is disposed of, the defendants will comply the same by bringing back the amount withdrawn alongwith the interest, if so ordered. Judge’s order is disposed of on the above terms.

3. It will be open to the defendants to make fresh application for discharge of the court receiver, in the event, suit is not restored to its file.